IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 267 of 2006
With
CIVIL APPLICATION No. 11299 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UTTAR GUJARAT VIJ COMPANY LTD. AND ANOTHER
Versus
CHHAGANBHAI RANCHHODBHAI PARMAR

==========

Appearance :
MR PREMAL R JOSHI for Appellants.
MR VK SHAH for MR BK DAMANI for Respondent.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 15/12/2006

ORAL JUDGMENT

ADMIT. Mr.V.K.Shah, learned advocate waives service of admission on behalf of the respondent. With the consent of the parties, this appeal is taken up for final hearing today.

The appellants herein are the original defendants of Civil Suit No.1566/2002. Case of the plaintiff in the aforesaid suit is that he is a consumer of the defendant-electricity company and he has got electricity connection in the suit property situated in Bavla taluka. The case of the plaintiff is that he is cultivating said land since last more than 75 years. It is also the case of the plaintiff that he had asked for electricity connection from the defendant company for agricultural purpose and, he was provided electricity connection from industrial feeder for farming purpose. Case of the plaintiff is that he is using said electricity supply only for the purpose of agricultural activity. It is also the case of the plaintiff that he was provided electricity supply from industrial feeder since last 25 years. It is also the case of the plaintiff that though the defendants are required to supply electricity through industrial feeder, now they want to transfer the feeder by suppling electricity from rural feeder instead of industrial feeder. On the aforesaid grounds, the plaintiff has filed aforesaid suit for declaration and injunction. In the aforesaid suit, the plaintiff gave an application for interim injunction with a prayer that till the suit is decided, defendant may be restrained from transferring electricity supply of the plaintiff from industrial feeder to rural feeder. The aforesaid injunction application was resisted by the defendant company on various grounds.

It is the say of the defendant – company that City Civil Court at Ahmedabad has no jurisdiction to try the suit as the property in question is situated at Bavla, and, therefore, the competent Court would be Civil Judge at Bavla. It was also the case of the defendant – company that initially rural feeder was not available and only by way of temporary measure the plaintiff was given electricity connection from industrial feeder. It is also the case of the defendant that as the rural feeder is available now, and, since the plaintiff can be given electricity at a

concessional rate from said feeder, company is entitled to shift the connection of the plaintiff from industrial feeder to rural feeder.

By a very cryptic order dated 10-2-2006, learned trial Judge granted interim injunction. It is the aforesaid order, which is impugned at the instance of the defendant company in this Appeal from Order.

Since a similar matter being Appeal from Order No.266/2006 is decided by this Court today and since the issue involved in this matter is covered in the aforesaid matter, reasonings given in aforesaid matter will govern this case also. Therefore, this Appeal from Order is disposed of with following directions.

Considering the reasonings given while disposing Appeal from Order no.266/2006, order of the trial Court deserves to be set aside, as the learned Judge has failed to consider the case from its proper angel. Since it is not in dispute that now rural feeder is available, which is meant for agriculturists only, insistence on the part of the plaintiff to get electricity from industrial feeder only is not proper. From rural feeder, the plaintiff can get electricity at a cheaper rate for a particular number of hours. Simply because the plaintiff was given benefit of getting electricity through industrial feeder for intervening period when rural feeder was not available, it does not give any right in favour of the plaintiff to get electricity from the same feeder by paying charges for rural feeder, especially when it was only a stop-gap arrangement till the rural feeder is made available.

By virtue of interim order, the plaintiff has continued to get the benefit under the industrial feeder since 2002, though the rural feeder was available at that time. Since the rural feeder was available since

2002, the plaintiff was required to get electricity from rural feeder, instead of that the plaintiff has continued to get electricity supply from industrial feeder by paying charges prescribed for rural feeder.

At this stage, Mr.Joshi pointed out that he is making a statement before this Court that wherever rural feeder is available, the farmers shall be subjected to conversion from industrial feeder to rural feeder so that more energy is available for industrial purpose and the farmers may continue to get electricity supply at a concessional rate from rural feeder. He submitted that process of such conversion will be completed within six months, where rural feeder is in existence. He submitted that since he is appearing for Bavla division, his statement may be considered only for that division. He submitted that he is making this statement after taking instructions from Mr.Sejpal, Executive Engineer as well as from Mr.A.G.Raval, Deputy Engineer, Bavla Division office of electricity company.

However, in my view, this has to be applied all over the State and wherever the farmers are getting electricity supply from industrial feeder even though the rural feeder is available, they may be shifted to rural feeder. Copy of this order may be sent to Chairman, Gujarat Urja Vikas Nigam to take appropriate action in this behalf, so that the grievance of the plaintiff that he is discriminated may not survive.

Since no one is required to suffer in view of interim orders of the Court, it will be open to the defendant company to take appropriate action against the plaintiff to recover the amount of difference, in the matter of payment of tariff between rural feeder and industrial feeder since 2002, i.e., from the date on which rural feeder was available, especially when the plaintiff continued to get such benefit by virtue of

interim injunction order granted by the trial Court, which is now vacated.

In view of above, this Appeal from Order is allowed. Order passed by the learned trial Judge below notice of motion in Civil Suit No.1566/2002 is quashed and set aside. Injunction application preferred by the plaintiff in Civil Suit No.1566/2002 stands dismissed. There shall be no order as to costs.

In view of the order passed in main Appeal from Order, no order on Civil Application no.11299/2006.

At this stage, Mr.Shah, learned advocate for the respondent submitted that this order may be stayed for some time as his client (respondent herein) would like to approach the Honourable Supreme Court.

In my view, when the plaintiff has no right to get electricity connection through industrial feeder and when rural feeder is available, from which the plaintiff can get electricity supply, request for staying this order is not required to be granted. Moreover, the plaintiff is getting electricity through industrial feeder by virtue of injunction order granted by the trial Court and since the rural feeder is now available, prayer for stay cannot be granted, hence, the same is rejected.

(P.B.Majmudar, J.)

/malek